

(2010) 08 AHC CK 0218
In the Allahabad High Court

Committee of Management Dau Dayal Mahila P.G. College
and Usha Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0218

Hon'ble Judges : R.K. Agrawal, J;A.P. Sahi, J

Bench : Division Bench

Judgement

1. These two appeals arise out of a common judgment in two writ petitions, one filed by the Management of the institution and the other by the students in relation to admission in M.Ed. courses conducted by the institution. The institution, having failed to receive any direction from the University for making admissions, had filed a writ petition in the year 2006 itself being Writ Petition No. 49255 of 2006. Interim orders were granted by this Court under which admissions were made by the institution and the students subsequently filed Writ Petition No. 9693 of 2009 for a mandamus to enable the University to allow them to appear in the exams. Both these writ petitions have been dismissed by the learned single Judge on 16.7.2009, hence this Appeal.

2. The dispute relates to admission in M.Ed. courses of Dau Dayal Mahila P.G. College, Firozabad, affiliated to the Agra University. The institution appears to have been granted permission/affiliation by the Chancellor His Excellency the Governor vide order dated 10.6.2004 for admission against 25 seats. As a consequence of this permission, the College contends that it started running the courses and that admissions were to be made in accordance with the U.P. State Universities (Regulation of Admission to Course of Instruction for Degree in Education in affiliated, associated and constituent Colleges) Order 1987. Chapter-III of the said provisions is quoted below:

CHAPTER III ADMISSION TO M.ED. CLASSES

15. Introductory.-- The provision of this Chapter shall apply for admission to a course of instruction in M.Ed. classes only in any college.

16. No person shall be admitted in any college unless he has passed an examination for the degree of B.Ed. conducted by a University established by law or an examination for the diploma of recognised B.T. or L.T.

17. Only those applications for admission to M.Ed. will be considered where the candidates, according to the statutes of the concerned University, fulfil all other qualifications except M.Ed., for appointment as a Lecturer in B.A. (Education) or in the B.Ed., department in the degree colleges of the State.

18. Admission according to merit.-- Candidates shall be admitted strictly in order of merit on the basis of percentage of marks obtained in the B.Ed. or its equivalent other recognised examinations. Full marks obtained in the theory and fifty per cent marks obtained in the practical examination shall be considered in calculating the percentage.

Illustration.--If a candidate has secured 240 marks out of 500 in the theory and 140 marks out of 200 in the practical examination then for the sake of calculation, the full marks obtained by him will be $240 + (140/2 \text{ or } 70) = 310$ and his percentage will be $44.28 (310 \times 100)/700$.

19. Application of Orders of Chapter II.-- The provisions of paras 4, 5, 6, 11, 12, 13 and 14 shall mutatis mutandis apply to admission under this Chapter also.

3. The University was requested to process admissions according to the said permission granted in the Session 2004-05 but having failed to receive any response, the Management filed Writ Petition No. 55847 of 2005. A counter-affidavit was filed in the said writ petition and it was indicated therein that only 2 candidates had been recommended by the University and according to the conditions imposed, 50% of the seats are to be filled up from the candidates recommended by the University. It was pointed out by the Management that the University having failed to fill up 50% seats, the entire session 2004-05 would go waste and, as such advertisement had been issued by the College for filling up the seats. The Court found that the scheme was a self financing scheme and accordingly directed the University to scrutinize the admissions and take suitable steps for admission.

4. Thereafter, for the session 2005-06 entrance examinations were held but the results were not declared. Consequently, the University did not continue with the admission process of the Session 2006-07. It is, therefore, clear that the University, which had to hold the entrance examination for admission to the M.Ed. courses, had not been able to hold the examinations. The reason given by the University for not processing the admissions for 2006-07 is delayed session. In the aforesaid background, the College had come up before this Court for an appropriate direction.

5. Upon entertaining the writ petition, this Court passed an order on 3.10.2006

to the following effect:

University is directed to provide 50% of the M.Ed. students for the academic session 2006-07 in the institution of the petitioner or show cause by the next date.

6. The matter was taken up on 12.10.2006 where an order was passed to the following effect:

Learned Counsel for the respondents states that he has received instructions but as the Registrar of the University has been placed under suspension of 4.10.2006, the counter-affidavit could not be filed.

As agreed, list/put up on 18.10.2006 for compliance of the order dated 3.10.2006.

Sd/- Hon. Vineet Saran, J Dt. 12.10.2006

7. Subsequently, when the University failed to provide the students, this Court passed the following interim order on 5.12.2006:

On 3.10.2006 this Court had directed the respondent- University to provide 50% of the M.Ed. students for the academic Session 2006-07 in the institution of the petitioner or who cause by the next date and 12.10.2006 was the date fixed. On the next date, on a statement made by the learned Counsel for the respondent-University mentioning that he had received instructions but as the Registrar of the University had been placed under suspension, the counter-affidavit could not be filed, as such, the matter was adjourned. Thereafter, on several dates the case was passed over on the illness slip sent by the learned Counsel for the respondent-University. The case has thus come up today but till date no counter-affidavit has been filed.

Learned Counsel for the petitioner has submitted that till date the respondent-University has not provided 50% of the M.Ed. students for the said Session.

In the aforesaid circumstances, it is directed that in case if within ten days from today the students are not provided to the petitioner-institution, the institution shall be at liberty to admit students and fill up the remaining seats, in accordance with law, after ten days.

Let this matter be listed on 20.12.2006.

Let a certified copy of this order be issued to the learned Counsel for the parties, within 24 hours, on payment of usual charges.

Sd/- Hon. Vineet Saran, J Dt. 5.12.2006

8. The University contends that a short-counter-affidavit had already been filed on 22.12.2006 and, as such, the sentence reciting that no counter-affidavit has been filed on behalf of the University was incorrect and, accordingly, a recall application with a detailed counter-affidavit was filed on 2.1.2007. The said recall

application was disposed of on 2.11.2007 by the following order:

A short counter-affidavit without giving any reply to the averments made in this writ petition had been filed by the respondent-University on 22.11.2006. Another detailed counter-affidavit has been filed on 2.1.2007 along with an application with the prayer for recalling the interim order dated 5.12.2006. In my view, the interim order dated 5.12.2006 does not require to be recalled. The said application be treated as an application for vacating the stay order.

List before the appropriate Court immediately after two weeks by which time the petitioner may file rejoinder affidavit.

Sd/- Hon. Vineet Saran, J Dt. 2.11.2007

9. Thus, it is evident that the aforesaid interim orders were passed from time to time and the Management contends that admissions were taken thereafter.

10. The students filed the subsequent Writ Petition No. 9693 of 2009 alleging that they have been admitted in accordance with the interim directions of this Court. This writ petition was filed in February 2009 in which the University filed a counter-affidavit to which a reply has been filed by the University. The students contend that they have been admitted and, therefore, for no fault of theirs, the University should be commanded to allow them to appear in the exams.

11. On behalf of the University, Sri Sanjay Kumar Singh contends that the Affidavits filed in support of the recall application and the subsequent Affidavits filed in both the writ petitions, it is absolutely clear that the institution has proceeded to admit students on its own without there being any order of the University and without compliance of any of the procedure including the guidelines framed by the National Council for Teachers Education and regulations framed for admission to M.Ed. classes in accordance with Statute 11.01. Sri Singh submits that Statute 11.01, which is reproduced below, entails that the qualifications has to be the same as that of a Lecturer in Education except for the Masters degree. The Statute 11.01 is quoted below:

11.01. (1) In the case of Faculties of Arts, Commerce Science and Home Science the minimum qualifications for the post of a lecturer in the University shall be Master's degree or an equivalent Degree of a Foreign University in the relevant subject with at least 55 per cent marks or its equivalent grade and consistently good academic record.

(2) In the case of Faculty of Education the minimum qualifications for the post of a lecturer in the University shall be Master's degree or an equivalent degree of a Foreign University in Educations (that is an M.Ed. degree) with at least 55 per cent marks or its equivalent grade and consistently good academic record.

(3)

(4)

(5) (a)

(b) A candidate for Lecturer ship in the Faculty of Education having obtained either 55 per cent marks in B.Ed. degree examination and second class in any other Bachelor's degree examination or 50 per cent marks in each of the two examination separately is said to have consistently good academic record;

12. Sri Singh contends that even these qualifications are not fulfilled by the students including the eligibility of 55% marks for admission in the courses. Sri Singh further submits that the grant of interim order by this Court was also against the law inasmuch as the University was not obliged to grant admission as a matter of compulsion. He further submits that the entrance examinations could not be conducted for processing the admissions as the session was late and, therefore, in the Meeting held by the University - Authority on 3.6.2008, it was decided to declare the Session of 2006-07 to be a Zero session. This fact has been brought on record through the counter-affidavit filed in the subsequent writ petition and it is stated that in view of the aforesaid position of the University, there is no occasion to permit the students to appear in the exams.

13. This matter was heard on several occasions and the learned Counsel for the appellant was directed to demonstrate before the Court as to even if the admissions had been made under the interim orders quoted herein above, what was the procedure followed by the College to finalize admissions. Sri Ranjit Saxena, learned Counsel for the appellant, has produced the record and has also filed Affidavits. The norms and standard for M.Ed. Degree Programme as prescribed by the National Council for Teachers Education has been appended along with the supplementary-affidavit dated 23.2.2010. Another supplementaryaffidavit has been filed on 25.2.2010 annexing therewith the list of the students, who had applied and the list of the admitted students. Sri Saxena contends that the aforesaid basic norms had been complied with and, therefore, the admissions were validly conducted by the College in accordance with the norms prescribed.

14. Having heard learned Counsel for the parties and in view of the aforesaid facts that emerge from the pleadings, it is evident that the College was not granted permission by the University to take admission for the session 2006-07. The University has not conducted any entrance test and has come up with a plea that the session has been declared to be a Zero session. It is worth noting that the resolution dated 3.6.2008 passed by the University in the Meeting of the Examination Committee fails to take notice of the interim orders passed by this Court in relation to the admissions of the present institution before proceeding to declare the entire session to be a Zero session. The University, while proceeding to do this, was obliged to take notice of orders passed in the year 2006- 07. This having not been done, the University, in our opinion, was not justified in taking a decision to declare the session to be a Zero session on account of the delay of session of the University itself. To this extent, the College cannot be said to be at any fault. This aspect of the matter, in our opinion, had not been noticed by the

learned single Judge while proceeding to dismiss the writ petition. The interim orders granted by this Court, therefore, permitted the institution to take admissions.

15. The next question which falls for consideration is that the procedure of admission of 25 students who are the petitioners in the second writ petition, the documents of which had been filed, indicate that 2 lists were prepared, one indicating the number of applicants who were 63 and the other a list of 25 students who were ultimately admitted and who are the petitioners in the second writ petition. The Affidavits filed do indicate some process having been adopted but there is nothing on record to demonstrate as to how these admissions were processed after calculating the minimum eligibility marks of the students. The marks of every student calculated according to the norms prescribed have not been indicated in the 2 lists. Learned Counsel contends that some students, who were higher in merit, did not turn up and, as such, they were issued intimations as to whether they would like to still seek admission or not. It is contended that in view of the fact that 25 students, who were admitted, turned up according to the notice issued and no other candidate staked a claim for admission, the admissions were finalized.

16. Learned single Judge, therefore, in our opinion, rightly arrived at the conclusion that in the absence of any such material it would be difficult to uphold the admissions. The conduct of the institution, therefore, in proceeding to take admissions was not according to conditions of recognition and the University cannot be said to have extended any such permission to the institution to go ahead with the admission. The University must have delayed the session yet it appears that the University had taken measures to rectify the same by declaring the session to be a Zero session. The University might have been compelled to do so but in our opinion, the Management of the institution had no occasion to proceed to take admissions without following the procedure and without bringing anything on record to indicate that the admissions were held in conformity with the procedure prescribed in law. This has resulted in an awesome injury to the students, who bona fide approached the institution for admission. The Management having not followed a genuine procedure as prescribed under law, has acted in violation of norms and in our opinion it is the Management which has created this confusion which has been worst confounded by the absence of any demonstrable procedure having been adopted by the College in accordance with law. The learned single Judge, therefore, in our opinion, was right in arriving at a conclusion in respect of the conduct of the institution.

17. There is yet another aspect of the matter. The appellants cannot plead estoppel as the University had nowhere on its own volition extended some promise on the basis whereof any legitimate claim can be set up on behalf of the students. The institution also could not have under the existing provisions compelled the University to allow it to take admissions without the involvement and participation of the University. Nonetheless, the University also was obliged

to take into account the various factors in relation to the conduct of such courses before proceeding to declare the Session as zero session. The University also, therefore, did not take action promptly and in the year 2008 passed a resolution for declaring the session to be a zero session. u/s 28 of the State Universities Act, there is a provision for statutory Admissions Committee which functions subject to the superintendence of the academic council. It is the Admissions Committee which lays down the policy for admission to various courses of studies in the University. The criteria and method of admission, therefore, has to be provided by the University. u/s 29 of the Act, there is a Statutory Examinations Committee which is entrusted with all functions of examination except those of autonomous Colleges where u/s 42 of the Act, the University has the authority to grant permission in the manner prescribed to run a particular course of study and hold an examination. The determination of such matters is left to the University. It is, therefore, clear that there is a direct control over all such matters of the University and hence the University is under a legal obligation to discharge its function, more so when the College had been making repeated requests and the litigation was going on from the session 2005-06 itself. Thus, the Institution, the University and the directions issued by this Court have all led to a situation where the students are standing on the brink of their career. It is pointed out by Sri Saxena that all the 25 students have completed their courses but they have not been permitted to take up the exams. He further submits that all the students being female candidates are in search of employment and looking to their capabilities, they would be contributing towards the educational system of the Society without causing any harm to the system.

18. In view of the aforesaid facts, let the University permit the petitioners of Writ Petition No. 9693 of 2009 to appear in the exams for the session 2006-07 for which the University shall take steps at the earliest. We are passing this order also because of the fact that no other student or candidate has put any challenge to the procedure adopted by the College in selecting the candidates for admission.

19. We may, however, make it clear that this order has been passed in the peculiar facts and circumstances of the present case as noted herein above and this order shall not be a precedent for any other course or any other session. The College is hereafter warned not to seek any admissions except with the approval of the University in accordance with rules and after complying with the procedure prescribed in law. Any such further attempt by the College shall be viewed seriously and the University shall recommend appropriate action against the Management of the institution in the event any such default is located being deliberately attempted by the institution at the cost of the students.

20. The Special Appeal stands disposed of and the order passed by the learned single Judge to that extent would stand modified accordingly.